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IN THE

Supreme Court of the United States

OCTOBER TERM 1963

No. 395

EUNICE JANOUSEK,
Petitioner

v.

EFFIE D. CHATTERTON, ELIZABETH CHATTERTON,
S. CHURCHILL ELMORE
Respondents

PETITION FOR WRIT OF CERTIORARI

EUNICE JANOUSEK
In Proper Person
730 15th Street, N. W.
Washington, D. C.

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Petitioner prays for Writ of Certiorari to review the judgment of the United States Court of Appeals—District of Columbia Circuit, entered on May 2, 1963.

CITATION TO OPINION BELOW

The opinion, reported in 317 F.2d 544, is as follows:

Per Curiam: This is an appeal from an order of the District Court dismissing appellant's motion to intervene and to add a party defendant in Civil Action No. 796-59 on the dockets of that court.

The District Court ruled that the motion to intervene "(did) not present a matter of right in accordance with Rule 24(a), Federal Rules of Civil Procedure, and that to grant such motion on basis

of Rule 24(b) would unduly delay the adjudication of the rights of the original parties." We find no error. Affirmed.

JURISDICTION

Judgment below was on May 2, 1963. Rehearing was denied May 24, 1963. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether Rule 24(a) F.R.C.P. may be construed to deny intervention where applicant's cause of action can be foreclosed and defeated by proceedings in the main action wherein the applicant, save for intervention, is without representation or means of protecting the right of action.

RULE OF FEDERAL PROCEDURE INVOLVED

Rule 24(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: * * * (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; * * *

STATEMENT

Petitioner has been libeled by assertions libelous *per se* made by the defendants Chatterton and their attorney, Elmore, (respondents herein) in pleadings they filed in a proceeding in the United States District Court, District of Columbia, (referred to here as the "main action"), wherein petitioner is not a party. The statements, irrelevant to that proceeding, are false and maliciously made. Under decisions of this Court and the appellate

court below, defamatory and libelous assertions in pleadings are not privileged when not relevant, (*Harlow* v. *Carroll*, 6 App. D.C. 128, 140), or when malice is shown (*White* v. *Nicholls*, 3 How. 266).

By timely motion petitioner applied for intervention of right under Rule 24(a). No application under 24(b), to intervene permissively, was made. Her proposed complaint shows that the defense of privilege—which, if sustained, would foreclose petitioner's right to proceed—will turn on the elements of falsity, malice and relevancy; all to be decided in the main action where petitioner is without representation and where she will be bound by the findings on these elements. Petitioner's motion and complaint show she is without adequate representation, that she will be bound by the judgment in the main action and that she is prepared to prove the falsity, the malice, the irrelevancy of the assertions by intervention in the main action. Her motion was summarily denied by order in the District Court. That order was affirmed by Per Curiam decision below.

REASONS FOR GRANTING THE WRIT

The decision below is contrary to the procedural directives of Rule 24(a) of the Federal Rules, and in conflict with the plain purpose and just objectives obvious in the terms of the Rule. The decision stands opposed to and in conflict with decisions of this Court and those of other Circuits construing Rule 24(a), particularly: *Participations Industrielles et Commerciales S. A.*, 343 U.S. 156; *Kozak* v. *Wells*, (8th Cir.), 278 F.2d 104; *Clark* v. *Sandusky*, (7th Cir.), 205 F.2d 915; *United Artists Corp.* v. *Masterpiece Productions*, (2nd Cir.), 221 F.2d 213; and also in conflict with its own prior decision: *Wolpe* v. *Poretsky*, 79 U.S. App. D.C. 141, 144 F.2d 505, all holding that where, as in this instance, the applicant is or may be without adequate representation, or will or may

be bound by the judgment, intervention of right should be granted.

CONCLUSION

This Court should grant this petition for Writ of Certiorari in the exercise of its supervisory powers over Federal practice and procedure, in its supervision and enforcement of the Federal Rules of Civil Procedure; in this instance in the proper interpretation and application of Rule 24(a), where the lower court's departure from the purpose and mandate of that Rule is in conflict with other Federal Circuits and decisions to the manifest prejudice of this petitioner and all other litigants who will in future be similarly prejudiced and injured in their basic rights of representation by the divergent and erroneous decision of the appellate court below.

Respectfully submitted,

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